

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FISH, WILDLIFE AND PARKS**

**Call to Order:** By **CHAIRMAN DANIEL FUCHS**, on February 1, 2001 at 3 P.M., in Room 152 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Daniel Fuchs, Chairman (R)  
Rep. Joe Balyeat, Vice Chairman (R)  
Rep. George Golie, Vice Chairman (D)  
Rep. Keith Bales (R)  
Rep. Debby Barrett (R)  
Rep. Paul Clark (D)  
Rep. Ronald Devlin (R)  
Rep. Tom Facey (D)  
Rep. Nancy Fritz (D)  
Rep. Gail Gutsche (D)  
Rep. Larry Jent (D)  
Rep. Jeff Laszloffy (R)  
Rep. Diane Rice (R)  
Rep. Rick Ripley (R)  
Rep. Allen Rome (R)  
Rep. Jim Shockley (R)  
Rep. Donald Steinbeisser (R)  
Rep. Bill Thomas (R)  
Rep. Brett Tramelli (D)

**Members Excused:** Rep. Steven Gallus (D)

**Members Absent:** None.

**Staff Present:** Linda Keim, Committee Secretary  
Doug Sternberg, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 398, 1/29/2001; HB 388,  
1/29/2001  
Executive Action: HB 306 As Amended; HB 398  
Tabled

**HEARING ON HB 398**

**Sponsor:** Gail Gutsche, HD 66, Missoula

**Proponents:** Matt Thomas, Montana Rivers Coalition  
Janet Ellis, Montana Audubon

**Opponents:** Bob Gilbert, Walleyes of Montana

**Opening Statement by Sponsor:**

**REPRESENTATIVE GAIL GUTSCHE, HD 66, MISSOULA,** stated HB 398 is a Bill about the improvement of Montana native fish species of special concern. This Bill changes the way future fisheries improvement program projects set up and suggests that the future fisheries review panel is prioritized by FWP. Currently projects that enhance the historic habitat of native fish species are given priority. The list of fish that are on the native fish species list was developed by FWP and the Montana Chapter of the American Fisheries Society. Changes are voted at an annual meeting and submitted to FWP for update. The list is limited to native species and includes all species listed under the Federal Endangered Species Act. It is a watch list, not a law. That's why this bill is needed. By focusing our habitat restoration efforts on all fish species that are in trouble, we have the opportunity to turn around habitat degradation at earlier stages. Need a clear means of identifying native fish species in decline, to keep them off the endangered species list. Once they are put on that list, the state loses control over management.

**Proponents' Testimony:**

**Matt Thomas, Montana Rivers Coalition,** states they are in favor of HB 398 because 1) It represents good stewardship - Montanans have a moral obligation to be good stewards of our natural heritage. This Bill would say it is our policy to preserve all fish species that are in trouble, not just the ones that show up as popular game fish. 2) The policy of addressing native habitat problems when they first become apparent is good for all native fish. The decline shows their habitat is being degraded and improving it would help all fish. 3) The Bill would further Montana's long standing policy to manage problems ourselves, rather than wait for fish management to go to the federal government under the Endangered Species Act. We have in this procedure a well conceived method for targeting problem species. It is FWP policy to use this list, but so far has been just an informational thing. This would be our opportunity to make it a law and show that we want to address the problems of fish as soon as they become apparent. Urges DO PASS on HB 398.

**Janet Ellis, Montana Audubon**, states they support this legislation because it is proactive and helps to keep the species off the endangered species list. They feel this simple Bill can do a lot of good and urge the Bill be passed.

**Opponents' Testimony:**

**Bob Gilbert, Walleyes of Montana**, states they share the concern about the decline of native species. Concerned about Line 23 where it talks about "reduction of species competition in rivers, lakes and streams for Montana's native fish species of special concern". He asks if that may include poisoning streams, ponds, and lakes to get rid of those non-native species that have been imported; mostly by FWP? These include brown trout, rainbow trout, Walleye in certain areas, and paddlefish, among others. Doesn't think we need to go that far, and states that current law in the Future Fisheries Act addresses this. Current law says emphasis must be given to projects that enhance the historic habitat of native fish species. Adding the language "reducing competition" gives concern there will be a flood of lawsuits by Montanans who like to fish these non-native species. Suggests using current law or striking the portion on Line 23 where it deals with species competition.

**Questions from Committee Members and Responses:**

**REPRESENTATIVE LASZLOFFY** asks how FWP feels about what we are doing? **Chris Smith, FWP** answers, we've administered the Future Fisheries Program consistent to the language in this Bill, so have no objections.

**REPRESENTATIVE BARRETT** asks about Page Two, Section 5(b), Line 17 where it says the department shall also present a detailed report to each regular session of the legislature on the progress of the future fisheries program and include the department's activities and expenses. Doesn't FWP already do this for all of their projects? **Chris Smith, FWP** answered, not for all department programs. There are specific programs identified by the legislature that require more detailed reports. He is not aware FWP produces reports of that detail for all programs.

**CHAIRMAN FUCHS** said he had been on Fisheries for two years, and has tried to obtain a measure of how much FWP was spending. FWP doesn't have authority to spend the money in Future Fisheries to go back and see what was accomplished with the projects we have done. This would be beneficial. That way we can measure what has been going in the program since it began in 1995.

**REPRESENTATIVE BARRETT** stated it says in the Constitution that the state government shall have strict accountability of all revenue and all monies spent. Where would you go in FWP if you want to look up a project? **Legislative Staffer Doug Sternberg** answers, All agency budgets are subject to review every two years. Certain reports, such as that of the Future Fisheries Program, detail the degree of information an agency is to provide for one particular program. That is one example. The report you are speaking of is more than a fiscal report. It is a strict accountability of money and on the ground projects. This report is considerably more detailed than a simple fiscal report that the agency would supply on all their programs. Any fiscal information that an agency would provide is available.

**REPRESENTATIVE GOLIE** stated if you want the accounting of any program in state government, we have the Legislative Auditor just down the hall. Just talk to him and he will give you the information you want.

**CHAIRMAN FUCHS** stated clarification in Future Fisheries. They asked how they could measure what the money had been spent on, and were told that it said specifically in the language of the Future Fisheries Program that the money was to be spent on habitat restoration. It wasn't directed to where they could go back and spend money on FTEs to look and see if what they were doing was beneficial. If it is not directed in the language, we weren't able to do that.

**REPRESENTATIVE BARRETT** stated she has the Future Fisheries report but she was hoping that detail was available for everything.

**REPRESENTATIVE CLARK** stated since FWP has already stated they administer the Future Fisheries Program in accordance with the language of this Bill, how do they deal with the reduction in species competition part of this? **Larry Peterman, Chief of Fisheries Division, FWP** stated the reduction in species competition is dealt with in legislation passed last session, HB 647. That was the bull trout and cutthroat restoration part of the Future Fisheries Program, and it deals with the projects that manage those two species. It is not broad language over the entire Bill. **REPRESENTATIVE CLARK** asked if you look at this language in light of the language in the previous Bill? **Larry Peterman** stated what we would do with this language is to emphasize species competition and also put that language in a broader context of the overall program. Previous language had to do with bull trout and cut throat trout. **REPRESENTATIVE CLARK** stated discussion has come up, maybe the Big Hole River, say it has brown trout in it. How does that fit into the plan? Are we worried about the brown trout being eliminated to protect the

cutthroat trout, etc.? **Larry Peterman** stated the way we deal with issues like that, the brown trout in the Big Hole River are not necessarily a problem with the native fish recovery program. We do have a grayling restoration program in the Big Hole and have done interactive competition studies which determine the degree of competition there. When we look at dealing with the issue of competition, there are only a few areas where that can effectively be dealt with. We can't just push a button on the larger rivers. We can do it with fishing regulations or putting more harvest pressure on one or the other, but that just reduces it; it doesn't eliminate the other species. **REPRESENTATIVE CLARK** said then we aren't talking about establishing a big poisoning program. Are you talking about a more limited program? **Larry Peterman** stated there are only limited places where we can effectively accomplish reducing species competition.

**REPRESENTATIVE BALES** asked what species are of special concern at this time, and what other native species are there? **Larry Peterman** said there are 16 species that are native species of special concern. There are 39 native species in the state. Those 16 species of special concern are broken down into three categories: one category are native species like the pallid sturgeon, white sturgeon, and bull trout. If they are reduced or lost, it would be a significant loss to the overall population. Those are Class A. It goes down to a Class C. Those species are wide spread, except there are only a few in Montana. If we lose any of those in Montana, it doesn't have any implication to the population. Of the 16, there are only seven in Class A that we are really concerned about. **REPRESENTATIVE BALES** said reduction of species competition in lakes and rivers indicates to me that maybe you should reduce some of the other native species for those species of concern. Please comment on this. **Larry Peterman** said the issue of species competition normally occurs between native and nonnative species. Normally a native species has evolved and coexisted where they don't have the competition problems. Not true across the board, however. In some cases we have altered the environment; a native species such as northern squawfish has really increased, and that is a predatory fish. **REPRESENTATIVE BALES** asked if he understood you to say that FWP is already doing what you consider this Bill will do? **Larry Peterman** said we do have the ability in Future Fisheries to address the species competition issue between bull trout and Yellowstone cutthroat. In areas outside of Future Fisheries, we also work with fishing regulations to accomplish that.

**REPRESENTATIVE RIPLEY** stated it seems like the reduction of species competition wording has struck a nerve, but it didn't seem to bother FWP, would you object to an amendment deleting

this? **REPRESENTATIVE GUTSCHE** replied she would not object, and has some other language to consider also in Executive Action.

**Closing by Sponsor:**

**REPRESENTATIVE GUTSCHE** said she realizes this language has struck some nerves, and is willing to work with it. Has some other language that was sent to her by someone that had some other ideas. This would give more emphasis to things Future Fisheries Program is already doing. Would be happy to work with language and would appreciate a DO PASS.

**Close Hearing on HB 398.**

**HEARING ON HB 388**

**Sponsor:** **REPRESENTATIVE GEORGE GOLIE, HD 44, Great Falls**

**Proponents:** **Jeff Barber, Montana Wildlife Federation**  
**Jean Johnson, Montana Outfitters**

**Opponents:** **Bob Gilbert, at Gary Marbut's request**

**Informational Witnesses:** **Mary Ann Wellbank, Child Support**  
**Division, Public Health and Human**  
**Services,**

**Opening Statement by Sponsor:**

**REPRESENTATIVE GEORGE GOLIE, HD 44, GREAT FALLS** stated HB 388 does three things. 1) Allows an applicant for a hunting or fishing license to use a driver's license number other than the applicant's social security number (SS#), or another identifying number, if the Department of Health and Human Services receives a federal exemption allowing the state to do so. 2) Makes it a penalty of official misconduct if any public employee purposely or knowingly discloses an individual's social security number. If a private employee purposely or knowingly discloses an individual's social security number for purposes not authorized by law, they are guilty of a misdemeanor. 3) Instructs FWP to delete an applicant's social security number and any electronic database two years after the application date for the most recent license. This is presently five years.

**Proponents' Testimony:**

**Jeff Barber, Montana Wildlife Federation** said doing something with social security numbers is a good idea. We support any

effort to get SS# off our hunting and fishing licenses, for all the reasons you heard Tuesday about identify theft.

**Jean Johnson, Montana Outfitters and Guides Association** said **Jeff Barber** stated it very well and we concur. Thank you.

**Opponents' Testimony:**

**Bob Gilbert**, here at request of **Gary Marbut, Montana Shooting Sports Association and Montana Fish & Game Association**, stated he would allow the committee to determine whether he is a proponent or an opponent. They like the enforcement section, but have a concern with New Section 3, because we are caving in to federal blackmail. Have suggested language; "If the Federal Government does not grant a waiver within six months after the Department of Health and Human Services has requested it, then Montana will no longer require SS# on hunting licenses, fishing licenses or conservation licenses". That will give the system a chance to work.

**Informational Witnesses:**

**Mary Ann Wellbank, Child Support Enforcement Division, Public Health and Human Services**, stated it is the federal law that required our department to sponsor the bill to put SS# on hunting and fishing licenses in the 1999 session, and we have requested a federal exemption. We requested to exempt all youths under 16, all Montana adults providing a driver's license, and all out of state adults providing a driver's license. The theory being that all states require your SS# underlying your driver's license. Checked with office of Child Support Enforcement and will have word on the exemption next week. Expects the exemption on youth under 16 to be approved.

**Questions from Committee Members and Responses:**

**REPRESENTATIVE LASZLOFFY** said you expect to get the exemption for those age 16 and younger. What additional information did the department need to make that determination. **Mary Ann Wellbank** said they wanted more specific statistical information about the youths in our caseload. They needed additional information concerning prospective collections from the 11 cases out of the 38,000 cases in our caseload, in which one of the parents or alleged parents is under age 16. Wanted to know if there would be additional costs to FWP of communicating the proposed policy changes to the impacted parties if we get an exemption for youth under 16. After speaking to FWP, we determined there was virtually no cost associated with changing the form and notifying

the public. Analyzed each of the cases and determined that none of them would benefit from this.

**Closing by Sponsor:**

**REPRESENTATIVE GOLIE** stated he brought this legislation forward to address the law that was passed in 1999. We keep talking about the sportsmen who don't want their SS# on their fishing and hunting licenses, and about the people who really don't care; that is their choice. The enforcement in this bill takes care of that. We have to consider them too. Mary Ann Wellbank told about possible exemptions; I don't think we can give up there. We have a new administration in Washington, and I'm optimistic.

**Close on HB 388.**

**EXECUTIVE ACTION ON HB 306**

**CHAIRMAN FUCHS** stated we will take up where we left off on HB 306. We had a DO PASS on HB 306 AS AMENDED, and we have a new copy of the amendment, 03, that got us bogged down. Doug has a new informational sheet on Degrees of Kindred.

**Legislative Staffer Doug Sternberg** explains Amendment 03, **EXHIBIT(fih26a01)**, and the chart on Degrees of Kindred, **EXHIBIT(fih26a02)**. #18 was where we got bogged down last time. Degrees of kinship are determined by consanguinity, which means by blood; and by affinity, which means by marriage. The subcommittee desired to make sure that your first cousin would be eligible. By citing in #18 that the applicant must be related by no more than the fourth degree of consanguinity or affinity, everyone on line four or above would be eligible to go hunting with the Montana resident sponsor. That includes first cousins. The last sentence now reads that licenses reserved pursuant to Subsection (1b) must be offered on a first-come, first-serve basis and may not be used for commercial purposes. The remaining amendments have to do with outlining and are technical and not that substantive, except for #36, which puts in a sunset of March 1, 2006. This date coincides with the scheduled termination of the Block Management aspects of the program.

**Motion/Vote:** REP. BALLYEAT moved that **REVISED AMENDMENT 03 TO HB 306 DO PASS. Motion carried unanimously.**

**Motion:** REP. BALLYEAT moved **AMENDMENT 04 TO HB 306 BE ADOPTED, EXHIBIT(fih26a03).**

**Discussion:** **REPRESENTATIVE BARRETT** questions one WHEREAS. It appears that the present system is not a level playing field.



Outfitters have been given too much advantage to acquire more and more hunting rights, to the detriment of resident hunters. In the report from Block Management, most of the people using it are resident hunters. **REPRESENTATIVE BALLYEAT** said without getting into a lengthy discussion, he agrees with the subcommittee.

**Motion/Vote:** REP. CLARK moved that **AMENDMENT 04 TO HB 306 DO PASS. Motion carried unanimously.**

**Legislative Staffer Doug Sternberg** stated that Amendment 05, **EXHIBIT(fih26a04)**, would add 87-1-269 to the Bill which would require the review committee which oversees the Block Management Program, commonly called the PLPW Council, to report on the implementation and success of this particular resident sponsored, nonresident hunter program as part of their Block Management Program evaluation. This will give a report back on HB 306.

**Motion/Vote:** REP. BALLYEAT moved that **AMENDMENT 05 TO HB 306 DO PASS. Motion carried unanimously.**

**REPRESENTATIVE BALLYEAT** stated that in addition to the amendments requested by the subcommittee, that he requested one also. It is Amendment 07, **EXHIBIT(fih26a05)**. This would be inserted on Page 3, Line 25 of the original Bill. It relates to the fact that the Bill increases the per hunter day fee for unrestricted big game hunting from \$10 to \$12. FWP is asking for additional flexibility if they were to move to a system other than a per hunter day fee. Concerned that if flat \$12 fee is left in there, that it would bar them from moving to a new funding formula for Block Management. The language suggested was to insert "if compensation is calculated using a formula based on hunter days". While using a per hunter day formula, it would be \$12 per day for non-restricted big game hunting, but if they moved to some other formula, they wouldn't be restricted from doing so.

**Motion:** REP. BALLYEAT moved that **AMENDMENT 07 TO HB 306 BE ADOPTED.**

**Discussion:** **REPRESENTATIVE GOLIE** said it is alright if FWP wants to do something different, but will it cost more money to do this? The Block Management system gets so much money. If they go to a different system and start paying more or less, are they going to take some people out of the system? **REPRESENTATIVE BALLYEAT** said currently there is nothing in statute that requires them to use a per hunter day fee. That is up to their discretion. If we insert this \$12 per hunter day fee into statute when there is nothing to that effect in statute now, that will bar them from looking at another funding approach.

**REPRESENTATIVE CLARK** said lines 25 and 26, with or without the Amendment, would increase compensation from \$10 to \$12. The problem is that there is a limited amount of funding for Block Management. Currently there is a waiting list for the Block Management Program, should increased funding become available. SB 285 will increase funding, and we will get some increased funding if this Bill passes. Wants the committee to understand, if we go from \$10 to \$12, it is possible we will use up funding that is available, and some people that would have gotten into Block Management that are at the bottom of the list won't be able to get in. Kind of like laying off an employee because you raise the minimum wage. Doesn't think \$12 is necessary right now, but would like to see this Bill in agreement with SB 285.

**REPRESENTATIVE BALYEAT** said the \$12 only applies to unrestricted big game hunting, not to any of the other types of hunting. It was considered in my original bill in response to **Pat Graham**, when he expressed that he thought it had been a major mistake when there was no differentiation between non-restricted big game hunting and bird hunting in the first place. Bird hunters can come back repeatedly in a season, even if they get birds, but once the big game hunter fills his tag, he will not be back. In **Pat Graham's** opinion, a disproportionate amount of Block Management money is being used by bird hunting as opposed to non-restricted big game hunting. With respect to if we leave the \$12 in, will it deplete Block Management funds; in this Bill's amended form, it should still generate several hundred thousand dollars of additional revenue, more than enough to cover the projected increase in per hunter day fees, as was calculated in the fiscal note. Even with \$12 in the Bill, he doesn't feel it is doing anything that will take money away that would otherwise be available to new land owners that want to participate.

**Motion/Vote:** REP. BALYEAT moved that **AMENDMENT 07 TO HB 306 DO PASS. Motion carried 19-1.**

**{Tape : 1; Side : B}**

**Motion:** REP. DEVLIN moved that **AMENDMENT 06 TO HB 306 BE ADOPTED, EXHIBIT (fih26a06).**

**Discussion:** **REPRESENTATIVE DEVLIN** said the idea behind this Bill is the provision which raises compensation from \$10 to \$12 a day and the cap on individual land owners from \$8,000 to \$12,000. There is a waiting list, but if you pay the same people more money, you aren't opening up more ground. My proposal is to leave payment fees the same, and the additional money generated from the sale of these nonresident licenses would expand the total number of acres that could be enrolled in Block Management.

**Legislative Staffer Doug Sternberg** stated, when the Amendment was initially drawn up, the effective date had not been discussed. #5 has already been accomplished through a prior Amendment, so you can cross that out. #4, the effect of striking section 1 in its entirety would be to remove any fee increase provisions from this Bill and leave the total allowable compensation at \$8,000. The per hunter day formula that the department uses in the rule making process would continue to apply.

**REPRESENTATIVE CLARK** said you may not be aware that the overall total amount will go from \$8,000 to \$12,000. Do you want it to stay at \$8,000 and change it in SB 285 as well? **REPRESENTATIVE DEVLIN** replied he feels it should stay at \$8,000, even with increased revenues, because that is the only way you will open up more ground. There is a waiting list to get into this program, and if you pay the people that are in it more money, an additional acres. **REPRESENTATIVE CLARK** said he agrees, but in expanding the program, wants to expand the program into the best habitat available. Block Management has been criticized as being over hunted. The concern is that prime habitat gets leased and what is left over goes to Block Management.

**REPRESENTATIVE BALLYEAT** stated they don't know if HB 285 will pass, so the increase was put into this Bill also. It was never intended to be an entitlement for small land owners. Feels it is necessary to increase the cap and the per day incentive because the purpose of Block Management was to provide a balance for resident hunters who were concerned about increased private land leases by outfitters. Talking about quality of habitat as well as quantity. The \$8,000 cap is so low that Block Management can't compete with outfitters to lease prime big game habitat.

**REPRESENTATIVE DEVLIN** said don't you think that will put government in competition with private enterprise?

**REPRESENTATIVE BALLYEAT** said, no, in this case we need to maintain some degree of balance between resident hunters and the outfitting industry with its nonresident hunters.

**REPRESENTATIVE LASZLOFFY** asked if an additional \$4,000 will be enough to be able to compete. **REPRESENTATIVE CLARK** answered yes, that is a 50% increase. There are people that are marginal that are in the program and feel it is hardly worth the effort. This will look like a good investment. **REPRESENTATIVE LASZLOFFY** asked if a \$4,000 increase is enough to be able to bring it into line with what is being paid by outfitters? **REPRESENTATIVE CLARK** said his personal opinion is we can't even get close to what outfitters are willing to pay to lease habitat. But, its better than nothing.

**REPRESENTATIVE BALLYEAT** states raising the cap from \$8,000 to \$12,000 is not mandatory and doesn't mean every landowner gets \$12,000. It means that is the cap that Block Management can pay to any one landowner, and it varies.

**Motion/Vote:** REP. BALES moved that **AMENDMENT 06 TO HB 306 DO PASS. Motion failed 7-13 with Jent, Ripley, Gallus, Thomas, Devlin, Golie and Fuchs voting aye.**

**Motion:** REP. BALLYEAT moved that **HB 306 BE ADOPTED AS AMENDED.**

**Discussion:** **REPRESENTATIVE GOLIE** asked who gets the new set aside licenses. **REPRESENTATIVE BALLYEAT** stated they are made available to nonresidents who are relatives of a Montana licensed hunter and who are willing to pay the price to buy a set aside license. **REPRESENTATIVE GOLIE** said since we are setting aside more licenses, is it conceivable that an outfitter can get more set aside licenses now? **REPRESENTATIVE BALLYEAT** stated we are not setting aside anymore licenses for nonresident, we are simply taking some of the licenses that are currently in the drawing for nonresidents and making them available if they are nonresident relatives who are willing to pay a higher price to get a guaranteed license, rather than submitting to the luck of the draw. As to whether this would make more licenses available to outfitters, we did add an amendment, as we voted on today, that these licenses cannot be used by anyone for commercial purposes. **REPRESENTATIVE GOLIE** said if we have a resident outfitter and he wants his family to come in on a guaranteed license, could he let his family hunt on one of these guaranteed licenses? **REPRESENTATIVE BALLYEAT** answered, yes, as long as he is not charging for it. **REPRESENTATIVE GOLIE** stated it concerns me that we are going with more guaranteed licenses for the higher prices. It seems to me that we are expanding the problem, rather than helping it. **REPRESENTATIVE BALLYEAT** said are you saying there is a problem with nonresidents being able to get a guaranteed license? We are not increasing the number of licenses nonresidents have available, it's just if they are willing to pay the higher price. Do you think it increases the pool of people that outfitters can offer their services to? **REPRESENTATIVE GOLIE** replied, yes. **REPRESENTATIVE BALLYEAT** said outfitters can offer their services to the same number of nonresidents who can get licenses through the luck of the draw. Looking at supply and demand, if what this Bill accomplishes is to make it so that nonresidents who have a relative in Montana wanting to hunt with them, it probably will reduce the number of licenses for nonresidents who have nobody to hunt with and might want to use the services of an outfitter. **REPRESENTATIVE GOLIE** said the difference is that before we had so many guaranteed licenses, and now we have more guaranteed licenses, and the pool that was open

to anyone at the lower price is smaller. So we are just going with more guaranteed licenses. Are we opening the door for more guaranteed outfitter licenses in the future? **REPRESENTATIVE BALYEAT** said he did not think so because language in the Bill says these licenses cannot be used for commercial purposes.

**REPRESENTATIVE SHOCKLEY** said the total number of licenses is the same, they are just being guaranteed to different persons under different circumstances. **REPRESENTATIVE FACEY** asked how they will distribute the 1,000 guaranteed licenses to the family members? **REPRESENTATIVE BALYEAT** replied first come, first served. FWP addressed this issue and said there are ways they would handle it, possibly even using the Internet.

**Motion/Vote:** REP. BALYEAT moved that **HB 306 DO PASS AS AMENDED**.  
**Motion carried 18-2 with Barrett and Devlin voting no.**

#### **EXECUTIVE ACTION ON HB 398**

**Motion:** REP. GUTSCHE moved that **AMENDMENT TO HB 398 BE ADOPTED**.

**Discussion:** **REPRESENTATIVE GUTSCHE** stated she would like to add an Amendment to strike "reduction of species competition" from Lines 22 and 23 of HB 398.

**Motion/Vote:** REP. GUTSCHE moved that **AMENDMENT TO HB 398 DO PASS**.  
**Motion carried unanimously.**

**CHAIRMAN FUCHS** has an Amendment on Lines 14 and 18; to strike "progress" and insert "success". This will give Future Fisheries the ability to provide a measurement. **REPRESENTATIVE GUTSCHE** said what if they are not having success? **CHAIRMAN FUCHS** said that is the point of every program. If we can't measure it as a Legislature, and the program isn't successful, then the program needs to go away or be redeveloped to be a success.

**REPRESENTATIVE GUTSCHE** said if this language is currently part of the Future Fisheries program, granted we want it to be successful, but we don't only want to report if they are. We still want the report. I would resist the Amendment.

**REPRESENTATIVE CLARK** said he didn't think it was **CHAIRMAN FUCHS'** intention that they don't have to report if it's not successful. How about using "level of success"? **CHAIRMAN FUCHS** stated he would change his request to "level of progress and success".

**REPRESENTATIVE BALES** asked if it is proper to change this?

**Legislative Staffer Doug Sternberg** stated that when dealing with present statutory language, we have to be careful. Just because a section is printed in a Bill, does not give us license to go in and change provisions in the section that we may or may not like.

Our Constitution requires that a Bill may not be changed as it goes through the legislative process. That goes back to the concept of a clear title that deals with one subject per measure. This gives the public and the members notice on what is being proposed. If it is viewed as a substantive change, it would be outside the scope of this particular proposal.

**CHAIRMAN FUCHS** said we discussed this briefly during the Hearing and determined there was no other legislation in this session where we could do this. If the committee feels this is a substantive measure, will withdraw it. **CHAIRMAN FUCHS** determined from show of hands that the committee wanted the motion withdrawn and did so.

**REPRESENTATIVE RICE** said she has concerns about Line 22. Hydroelectric dams have been removed for restoration of spawning areas. Please elaborate. **REPRESENTATIVE GUTSCHE** said she doesn't think any dams will be removed as a result of this Bill. Nothing drastic such as that has happened. Under current statutory language, they are already doing some of these things, this just gives particular emphasis to them helping restore habitat and spawning areas, etc. It is not within the scope of this Bill to do that. **REPRESENTATIVE RICE** said it was never clear if this is going to include poisoning? **REPRESENTATIVE GUTSCHE** defers to **Larry Peterman, FWP**. **REPRESENTATIVE RICE** rephrased the question. **Larry Peterman** said the restoration of habitat and spawning areas usually referred to is if there is a blockage in the stream through a culvert. Anything done is with the consent of the private landowner that the project is on. Is not aware of hydroelectric facilities that are affected by this. This Bill is only designed to look at small streams where we may have a culvert or a barrier of some sort that is blocking migration, and deal with that; that is restoration of spawning habitat. If it is silted in or there are structures in the streams, they can go in and modify those. **REPRESENTATIVE RICE** asked if this will include poisoning? **Larry Peterman**, stated with the removal of the reduction in species competition, it would not.

**REPRESENTATIVE LASZLOFFY** stated the Bill is redundant. In Line 21, emphasis is being given to projects that enhance historic habitat. Everything that is in line 22 and 23 with the exception of species of special concern is addressed within that. From a larger management picture, you don't want to have to deal with an endangered species. It is in the best interests of the department not to go that far, and I don't think it has to be mandated in statute. They are basically doing everything that is contained within this Bill now. We might be tying the hands of the biologists on the scene if we say they have to do certain

things. Allow them to work within their realm of expertise and allow the program to be administered the way it is now.

**REPRESENTATIVE RIPLEY** stated if we are doing everything now, why do we need the Bill? **REPRESENTATIVE GUTSCHE** said the part we are not doing was identified by **REPRESENTATIVE LASZLOFFY**. We are not working with all fish species of special concern. You heard one of the FWP representatives speak about the three native fish they are working with. You heard there were 39 species, and someone else said there are 50. There are 16 species of special concern. It is just an expansion of the program.

**REPRESENTATIVE BALES** said he has problems with this. Of the species of special concern; seven are top priority because they are mostly found in Montana. The majority of the species were also found in other states, and Montana is not the primary habitat where they are found. So it would not be as critical if they were lost. To me this says, in essence, we may give more emphasis to a species of special concern that is not necessarily native to Montana, than a species that is not of special concern that is native to Montana. Has serious questions about delineating it this way.

**REPRESENTATIVE CLARK** feels it is important that the committee knows the process they go through when there is a request for listing a species on the endangered list. First it is a solicitation for listing, then a justification, and a hearing process of determination. The species can be eligible and not be on the list. That is the case with the prairie dog, it is eligible but not on the list. One of the first things the Federal Government will look at is whether state agencies of the hosting state have a plan of their own in place. If they see the state doing something about it, it is kept off the list.

**REPRESENTATIVE GUTSCHE** said in response to **REPRESENTATIVE BALES**, it is not possible, it can only be a species native to Montana in this Bill.

**REPRESENTATIVE BARRETT** stated in response to **REPRESENTATIVE CLARK**, we are already going through this with a plan in place for fish and other species. I like the state to have a plan, but it is more restrictions.

**REPRESENTATIVE LASZLOFFY** said if we need a plan, can't we just do it administratively. Does it have to be legislatively?

**REPRESENTATIVE CLARK** said yes, primarily any plan we come up with would be done administratively. For example, with prairie dogs, we have a working group of state agencies that deal with this. The plan itself will not be in statute. What is in statute is

the intention of the legislature to be proactive. If we are proactive, we won't have to be reactive.

**Motion/Vote:** REP. GUTSCHE moved that HB 398 DO PASS AS AMENDED.  
Motion failed 2-18 with Clark and Fuchs voting aye.

**Substitute Motion:** REP. GUTSCHE made a substitute motion that HB 398 AS AMENDED BE TABLED.

HB 398 AS AMENDED is Tabled.



**ADJOURNMENT**

Adjournment: 4:55 P.M.

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REP. DANIEL FUCHS, Chairman

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LINDA KEIM, Secretary

DF/LK

**EXHIBIT** (fih26aad)